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Claudio Gini

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NOTARO & MICHALOS P.C.
100 DUTCH HILL ROAD
SUITE 110
ORANGEBURG, NY 10962-2100

EXAMINER

FREEMAN, JOHN D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,484	Applicant(s) GINI, CLAUDIO	
	Examiner John Freeman	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49 and 51-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49 and 51-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION***Claim Objections***

1. Claims 49, 58-60, and 62 are objected to because of the following informalities:
- Claim 59 contains a typographical error: the claim recites “LLOPE” instead of “LLDPE”.
 - Claim 59 recites “said first adhesive layer B LLDPE comprises modified...” This should be replaced with “said first adhesive layer B comprises LLDPE modified...”

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 49, 51, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh (US 5,843,502) in view of Hart, Jr. et al. (US 5,202,162).
4. Ramesh discloses a seven-layered heat-shrinkable film for packaging (col 1 ln 8-14). Heat shrinkable films are made through biaxial orientation (col 5 ln 26-30; col 9 ln 10-19). The examiner reproduces Fig. 5 with the composition of each layer identified, and how the layers relate to Applicant's claimed multilayer film (col 21 ln 25-col 22 ln 44):

57	polyamide	G	polyamide
56	LLDPE w/ MAH	F	LLDPE w/ MAH
52	polyamide	E	polyamide
53	grafted EVA	D	ethylene copolymer with MAH
54	polyamide	C	polyamide
55	LLDPE w/ MAH	B	LLDPE w/ MAH
51	ionomer	A	ionomer

“MAH” is maleic anhydride and “EVA” is ethylene/vinyl acetate copolymer.

5. Layers 52, 54, and 57 may each comprise polyamides. Ramesh teaches polyamides such as PA 6; PA 66; and copolymers thereof provide abuse-resistance and elastic recovery properties to the film (col 19 ln 39-55).
6. The grafted EVA refers to EVA grafted with maleic anhydride (col 13 ln 6-13).

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7. Note layer 51 is analogous to a disclosed layer 14 of another embodiment (col 21 ln 25-30), which can comprise an ionomer (col 16 ln 54-62).

8. Ramesh is silent with regard to the identity of the cation of the ionomer.

9. Zinc and sodium metals were wholly conventional cations for ionomers at the time of the invention. For example, Hart, Jr. discloses ionomers typically comprise sodium and zinc (col 4 ln 65+).

10. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use zinc and/or sodium salts as they come from readily available and inexpensive neutralizing agents.

11. Though the thickness of the multilayered film is not limited, Ramesh provides guidelines for a film ranging from 0.3-15 mils (col 15 ln 60+). The following table lists the thickness ranges for the individual layers:

	Thickness (mils)
57	1.2
56	1.85
52	0.2-10
53	0.1-5
54	0.1-8
55	0.05-9
51	0.02-3

These values either anticipate or otherwise overlap with the presently claimed thicknesses. As set forth in MPEP 2144.05, in the case where the claimed range “overlap or lie inside ranges disclosed by the prior art”, a *prima facie* case of obviousness exists, *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

12. The examiner takes the position that Ramesh’s polyamides would intrinsically have the yield points and elastic moduli properties presently claimed because they are the same as presently claimed. Therefore, the film would satisfy Applicant’s Young’s modulus and moment force limitations, as the film mirrors Applicant’s film in structure and composition.

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13. Claims 52-55, 57, and 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh (US 5,843,502) in view of Hart, Jr. et al. (US 5,202,162) as applied to claims 49, 51, and 63 above, and further in view of Kamp (US 4,561,108).

14. Ramesh discloses a seven-layered heat-shrinkable film for packaging as previously described.

15. Regarding claims 52 and 64:

16. Ramesh is silent with regard to an adhesive layer comprising a terionomer.

17. However, the use of multipolymer-based adhesives including ionomeric copolymers was well-known in the art to be an equivalent and exchangeable adhesive for the modified polyolefins or modified EVA used by Ramesh, as disclosed by Kamp for example (col 14 ln 54+).

18. At the time of the invention, it would have been obvious to one of ordinary skill in the art to replace any of the adhesive layers 53, 55, and 56 with an equivalent adhesive such as an ionomeric-containing terpolymer.

19. Regarding claims 53 and 65:

20. Ramesh teaches one can use additionally in the polyamide layers aliphatic polyamides including PA 11; PA 12; and PA 6,12 (col 19 ln 39-55).

21. Regarding claims 54, 55, 66, and 67:

22. Ramesh teaches one can use additionally in the polyamide layers amorphous polyamides including PA 6I and PA 6T (col 19 ln 39-55).

23. Regarding claim 57:

24. PA 6 is an aliphatic polyamide.

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25. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh (US 5,843,502) in view of Hart, Jr. et al. (US 5,202,162) as applied to claims 49, 51, and 63 above, and further in view of Ramesh et al. (US 5,534,277)

26. Ramesh discloses a seven-layered heat-shrinkable film for packaging as previously described. Ramesh discloses the use of copolymers of PA 6 and PA 66 and amorphous PA.

27. Ramesh is silent with regard to a polyamide layer containing a blend of PA 6/66, amorphous PA, and a terionomer.

28. It was well-known in the art that the addition of ionomer-based polymers affect the crystallinity of polyamides and therefore provides a way to control various properties of a film, such as the ability to orient the film as disclosed by Ramesh '277 for example (abstract, col 3 ln 60-col 4 ln 2).

29. At the time of the invention, it would have been obvious to one of ordinary skill in the art to add a terionomer to the polyamide blend to control the crystallinity of the layer, and thereby control properties of the resultant film, such as the ability to orient the film.

30. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh (US 5,843,502) in view of Hart, Jr. et al. (US 5,202,162) as applied to claims 49, 51, and 63 above, and further in view of Kamp (US 4,561,108), DiPoto (US 5,558,930), and McDonald et al. (US 6,148,587).

31. Regarding claim 61:

32. Ramesh discloses a seven-layered heat-shrinkable film for packaging as previously described.

33. Ramesh is silent with regard to an adhesive layer comprising a terionomer.

34. However, the use of multipolymer-based adhesives including ionomeric copolymers was well-known in the art to be an equivalent and exchangeable adhesive for the modified polyolefins or modified EVA used by Ramesh, as disclosed by Kamp for example (col 14 ln 54+).

35. At the time of the invention, it would have been obvious to one of ordinary skill in the art to replace any of the adhesive layers, including layer 55, with an equivalent adhesive such as an ionomeric-containing terpolymer.

36. Ramesh is silent with regard to an adhesive layer comprising EVA/EMA copolymer.

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37. However, the use of multipolymer-based adhesives including copolymers of EVA and EMA was well-known in the art to be an equivalent and exchangeable adhesive for the modified polyolefins or EVA used by Ramesh, as disclosed by DiPoto for example (col 4 ln 59-col 5 ln 5).

38. At the time of the invention, it would have been obvious to one of ordinary skill in the art to replace any of the adhesive layers with an equivalent adhesive such as EVA/EMA copolymer.

39. Ramesh discloses layer 52 is a core layer (col 21 ln 38), and provides guidance that core layers can be selected for specific impermeability properties (col 14 ln 38-45).

40. Ramesh is silent with regard to a layer of PVA.

41. PVA was known to be an equivalent and exchangeable oxygen barrier for materials such as polyamide, and polyester. For example, McDonald discloses these polymers as barriers suitable for use in heat-shrinkable multilayer films (col 9 ln 39-50).

42. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use PVA as an oxygen barrier layer as the core layer 52 in Ramesh's film to protect the food product from spoilage.

43. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramesh (US 5,843,502) in view of Hart, Jr. et al. (US 5,202,162) as applied to claims 49, 51, and 63 above, and further in view of Kamp (US 4,561,108), DiPoto (US 5,558,930), and Shiiki et al. (US 6,245,437).

44. Regarding claim 62:

45. Ramesh discloses a seven-layered heat-shrinkable film for packaging as previously described.

46. Ramesh is silent with regard to an adhesive layer comprising a terionomer.

47. However, the use of multipolymer-based adhesives including ionomeric copolymers was well-known in the art to be an equivalent and exchangeable adhesive for the modified polyolefins or modified EVA used by Ramesh, as disclosed by Kamp for example (col 14 ln 54+).

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48. At the time of the invention, it would have been obvious to one of ordinary skill in the art to replace any of the adhesive layers, including layer 55, with an equivalent adhesive such as an ionomeric-containing terpolymer.

49. Ramesh is silent with regard to an adhesive layer comprising EVA/EMA copolymer.

50. However, the use of multipolymer-based adhesives including copolymers of EVA and EMA was well-known in the art to be an equivalent and exchangeable adhesive for the modified polyolefins or EVA used by Ramesh, as disclosed by DiPoto for example (col 4 ln 59-col 5 ln 5).

51. At the time of the invention, it would have been obvious to one of ordinary skill in the art to replace any of the adhesive layers with an equivalent adhesive such as EVA/EMA copolymer.

52. Ramesh discloses layer 52 is a core layer (col 21 ln 38), and provides guidance that core layers can be selected for specific impermeability properties (col 14 ln 38-45).

53. Ramesh is silent with regard to a layer of PGA.

54. PGA was known to be an equivalent and exchangeable oxygen barrier for materials such as polyamide, and EVOH. For example, Shiiki discloses these polymers as barriers suitable for use in heat-shrinkable multilayer films (col 2 ln 15-28), and that PGA has better temperature and humidity resistance (col 2 ln 22).

55. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use PGA as an oxygen barrier layer as the core layer 52 in Ramesh's film to protect the food product from spoilage.

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56. Claims 49, 51, 59, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingraham (US 2003/0064181) in view of Ramesh (US 5,843,502).

57. Regarding claims 49, 51, and 63:

58. Ingraham discloses a shrink film for food packaging [0038]. Fig. 1, a modified version of which is reproduced here by the examiner, represents one seven-layer embodiment, which Ingraham discusses in paragraphs [0058]-[0080]:

	Chemical Identity	Relative Thickness	Applicant Label
10	Nylon	5-20%	G
12	Adhesive	5-20%	F
14	Nylon	5-20%	E
16	Adhesive	5-20%	D
18	Nylon	5-20%	C
20	Adhesive	5-30%	B
22	Sealant	15-40%	A

46. Regarding the thickness of each layer, the ranges disclosed by Ingraham overlap with those claimed by Applicant. As set forth in MPEP 2144.05, in the case where the claimed range “overlap or lie inside ranges disclosed by the prior art”, a *prima facie* case of obviousness exists, *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

47. At the time of the invention, it would have been obvious to one of ordinary skill in the art to create layers with the claimed thicknesses through routine experimentation of Ingraham’s invention.

48. Nylon layers 10, 14, and 18 can be nylon 6 or nylon 6,66 [0061; 65; 67]. The examiner notes the present claims recite layer G “consists of” a polymer of PA 6 or PA 6/66. While Ingraham teaches corresponding layer 10 “may” contain an antiblocking agent [0059] to prevent blocking, i.e. to prevent the film from sticking to itself, the presence of the agent is not required for the use of the film. One of ordinary skill would recognize the agent does not represent a critical feature of Ingraham’s invention, but merely represents a standard practice in the art that is needed only with certain uses of a film.

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49. Adhesive layers 12, 16, and 20 can be ethylene copolymers, such as LLDPE or EVA, modified with maleic anhydride [0064;66; 76]. Sealant layer 22 can comprise any known sealant material including LDPE, LLDPE, and ionomers [0077].

50. Ingraham is silent with regard to biaxially orienting the film.

51. The use of biaxial orientation was very well known in the art at the time of the invention. For example, it was known to be useful in the making of heat-shrinkable films in packaging. See Ramesh at column 9 lines 10-19.

52. At the time of the invention, it would have been obvious to one of ordinary skill in the art to biaxially orient Ingraham's film to create a heat-shrinkable film.

53. The examiner takes the position that Ingraham's polyamides would intrinsically have the yield points and elastic moduli properties presently claimed because they are the same as presently claimed. Therefore, the film would satisfy Applicant's Young's modulus and moment force limitations, as the film mirrors Applicant's film in structure and composition.

54. Regarding claim 59:

55. Ingraham teaches the addition of an amorphous nylon to the nylon layer [0075].

59. Claims 52-57 and 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingraham (US 2003/0064181) in view of Ramesh (US 5,843,502) as applied to claims 49, 51, 59, and 63 above, and further in view of Hart, Jr. et al. (US 5,202,162) and Kamp (US 4,561,108).

60. Ingraham and Ramesh disclose a biaxially oriented film as previously described.

61. Regarding claims 52 and 64:

62. Ingraham teaches any sealant material can be used in the sealant layer, including ionomers [0077], but is silent with regard to the cationic salts used therewith.

63. Zinc and sodium metals were wholly conventional cations for ionomers at the time of the invention. For example, Hart, Jr. discloses ionomers typically comprise sodium and zinc (col 4 ln 65+).

64. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use zinc and/or sodium salts as they come from readily available and inexpensive neutralizing agents.

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65. Ingraham teaches any adhesive material can be used in the adhesive layers [0064]. The references are silent with regard to a terionomer-based adhesive.

66. However, the use of multipolymer-based adhesives including ionomer copolymers was well-known in the art to be an equivalent and exchangeable adhesive for the modified polyolefins or modified EVA used by Ingraham, as disclosed by Kamp for example (col 14 ln 54+).

67. At the time of the invention, it would have been obvious to one of ordinary skill in the art to replace any of the adhesive layers 12, 16, and 20 with an equivalent adhesive such as an ionomer-containing terpolymer.

68. Regarding claims 53 and 65:

69. Nylon layer 18 can include aliphatic nylon such as nylon 12 [0074].

70. Regarding claims 54-56, 66, and 67:

71. Ingraham teaches the addition of an amorphous nylon to the nylon layer [0075].

72. At the time of the invention, it would have been obvious to one of ordinary skill in the art to include terionomer in any of the nylon layers, along with an amorphous nylon, to improve adhesion between the various layers.

73. Regarding claims 57:

74. Nylon 6 is an aliphatic polyamide.

75. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ingraham (US 2003/0064181) in view of Ramesh (US 5,843,502) as applied to claims 49, 51, 59, and 63 above, and further in view of Mergenhagen et al. (WO 97/48554) or Wallace et al. (US 2003/0157355).

76. Ingraham and Ramesh disclose a biaxially oriented film as previously described.

77. Ingraham teaches any sealant material can be used in the sealant layer [0077], but is silent with regard to a sealant layer of ethylene plastomer.

78. Ethylene plastomers were well-known in the art to be suitable sealants for packaging purposes. For example, Mergenhagen discloses ethylene plastomers for peelable seals (abstract). Also Wallace

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teaches ethylene plastomers as equivalent and exchangeable sealant for LLDPE a sealable layer in a multilayer heat-shrinkable film [0013].

79. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use an ethylene plastomer in the sealant layer because it was a well-known sealant with moisture barrier properties.

Claim Rejections - 35 USC § 112

80. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

81. Claims 49 and 51-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

82. Claim 49 recites layers C, E, and G act as barriers to aqueous steam. The claim further recites each layer may comprise a polyamide polymer. As polyamides are not conventionally used as moisture or steam barriers—since the polymers absorb water—it is not clear in what way Applicant intends for the layers to act as barrier to aqueous steam.

83. Claim 49 recites a film “comprising a plurality of the overlaid layers” in line 2. There is insufficient antecedent basis for this limitation in the claim.

84. Claim 58 recites a film “comprising a plurality of the overlaid layers” in line 2. There is insufficient antecedent basis for this limitation in the claim.

85. Claim 59 recites a film “comprising a plurality of the overlaid layers” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Response to Arguments

86. Applicant's arguments filed 23 July 2009 have been fully considered but they are not persuasive.

87. Regarding rejections under 35 USC 103:

88. Applicant's amendment to use exclusionary language, i.e. "consisting of", when defining layer G in all of the present claims has overcome the rejections over Shepard. As disclosed in MPEP 2111.03, the use of "consisting of" excludes any element or ingredient not specified in the claims, which in the current case excludes any material other than PA 6 or PA 6/66, except impurities associated therewith. Shepard, however, discloses a blend of polyamide polymers that includes PA 6.

89. Applicant submits Ramesh '502 is used in a different field than the present invention (p21). Intended use is not dispositive to patentability, however, particularly when such use is not present in the claims.

90. Applicant submits Ramesh '502 is silent with regard to curling (p21). As noted in the rejection, the examiner takes the position that Ramesh's polyamides would intrinsically have the yield points and elastic moduli properties presently claimed because they are the same as presently claimed. Therefore, the film would satisfy Applicant's Young's modulus and moment force limitations, as the film mirrors Applicant's film in structure and composition. Applicant has provided no evidence to suggest the polymers taught by Ramesh '502 do not meet the present requirements.

91. Applicant submits one of ordinary skill would have to make "a number of choices" to arrive at the present invention and one would not have been motivated to such choices to obtain a film that does not curl (p22). The fact remains, however, that Ramesh '502 teaches the various layers required by the present claims. Simply noting Ramesh '502 discloses other embodiments does not render the present invention unobvious when the reference provides clear teaching of the present invention. Note too, one of ordinary skill need not have the same motivation as Applicant to arrive at the present film. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

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92. Applicant notes Ramesh '502 teaches cross-linking in one embodiment (p22). According to Applicant cross-linked polymers show reduced curl, but is not recyclable. Thus, Applicant appears to admit Ramesh '502 teaches a film with low curl. Applicant states the present films are not cross-linked because cross-linking prevents recycling of the film. However, this again represents an intended use, which is also not in the claims, and is not generally dispositive to patentability. The present claims do not exclude the film from being cross-linked.

93. The examiner notes Hart and Kamp are relevant as teaching references that disclose zinc- and sodium-containing ionomers, and the use of ionomers as adhesives, respectively. While they do not disclose all the features of the present claimed invention, they are used as teaching references, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981).

94. Applicant asserts Ramesh '502 does not teach biaxial orientation of seven-layer films. The examiner strongly disagrees with this line of reasoning. Ramesh discloses on column 5 lines 26-30 that an object of the invention is a biaxially oriented film. One of ordinary skill would recognize the seven-layer film can be biaxially oriented to produce a heat-shrinkable film having desirable heat shrink properties. Furthermore, biaxial orientation is ubiquitous in the packaging and polymer film arts, and except in those cases where biaxial orientation ruins the desired result of an invention, the practice would be obvious to one of ordinary skill.

95. Applicant points to the multilayer structure of Ramesh '277 and notes the structure conflicts with the present invention. The examiner uses Ramesh '502 for the structure of the film, however, rather than Ramesh '277. While Ramesh '277 does not disclose all the features of the present claimed invention, it is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely blends of polyamide and ionomer, and in combination with the primary reference, discloses the presently claimed invention.

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96. While McDonald, DiPoto, and Shiiki do not disclose all the features of the present claimed invention, they are used as teaching references, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather each reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention.

97. Regarding rejections under 35 USC 112:

98. Applicant's explanation as to how the present polyamide polymers present barriers to steam has not clarified the examiner's confusion. The examiner could find no references in the prior art that describe any polyamides as capable of being a steam barrier. The art indicates polyamides do not respond well to moisture, as they lose oxygen barrier properties upon absorbing water. Applicant even acknowledged this when pointing to Shepard, which discloses polyamides are not moisture barriers. Applicant's argument that the present polyamide polymers have a "structural organization" that provides "remarkable mechanical properties remarkably different" from the prior art further confuses the examiner. It is not clear whether the present polymers have particular structures that confer the presently claimed properties. If so, those structural features should most likely appear in the claims. Further, nothing in the specification appears to relate to these features.

99. Claims 49, 58, and 59 still contain language without proper antecedent basis.

100. Applicant's evidence showing LLDPE is in fact a copolymer of ethylene and an alpha-olefin is found to be persuasive. The previous rejection is withdrawn.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of

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this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Freeman whose telephone number is (571)270-3469. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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John Freeman
Examiner
Art Unit 1794

/John Freeman/
Examiner, Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794